



# ITG News

Keeping First Nations Informed



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## Message From The Director

As the office of Indian Tribal Governments moves into its fifth year of existence, I want to reiterate my commitment to maintaining open communications with our customer base, America's First Nations. While tax issues are often complex and sometimes contentious, we are committed to ensuring that we do everything possible to assist in resolving federal tax concerns.

We continue to seek opportunities to dialogue with tribes and tribal associations. We have found these opportunities to be invaluable, not only for the ability it provides us to share current tax information, but also for the opportunity to listen to questions and concerns on the part of tribes. We welcome all invitations to meet with individual tribes, regional tribal groups, tribal tax associations, and tribal leadership councils.

We have continued to enhance our web site, by adding new products, such as Publication 4268 – an Employment Tax Guide for Tribes, to existing products such as our Frequently Asked Questions and Publication 3908 - the gaming tax guide. Because many tribes have told us that they have minimal Internet access, we have also created and distributed publications, along with common tax forms, via a CD-Rom. If you would like a copy of the CD-Rom please feel free to contact your ITG Specialist.

As many of you may be aware, several years ago the Tax Exempt Government Entities Division formed an outside stakeholder group to assist in identifying areas where the Service needed to undertake improvements to better meet customer needs. The Advisory Committee to the TEGE Commissioner (ACT) has 20 total members who each serve a multi-year term. I am pleased to announce that Robert Gips and Lenor Scheffler were recently appointed to fill vacancies on the ACT, and will be representing tribal interests. Both have extensive experience with tribal issues, and we look forward to their invaluable contributions.

Finally, I want to ensure that all of you feel free to contact me at any time with any concerns you may have that cannot be resolved by our field staff. I can be contacted at (202) 283-9800, or via e-mail at [christie.jacobs@irs.gov](mailto:christie.jacobs@irs.gov).

Christie Jacobs



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## An Incentive to Join EFTPS

The Internal Revenue Service has announced an incentive to encourage enrollment in and use of the Electronic Federal Tax Payment System (EFTPS). Approximately 1 million employers could qualify for a refund of a previously paid federal tax deposit (FTD) penalty.

The EFTPS-FTD penalty refund offer allows business taxpayers an opportunity to receive an automatic one-time penalty refund if they have been assessed a deposit penalty on a Form 941, Employer's Quarterly Federal Tax Return. The offer is available to employers who are not mandated to use EFTPS. To qualify for the offer, the employer must:

- use EFTPS for one year (four consecutive quarters),
- make all Form 941 payments on time and,
- have previously fully paid the penalty.

Using the electronic payment system is much more accurate and much less burdensome for taxpayers. At the same time, the government saves money because there are fewer errors, fewer notices and fewer problems.

Using EFTPS eliminates the vast majority of the errors found on paper submissions. These errors on paper coupons result in late or misapplied payments and an FTD penalty. Paying taxes using EFTPS means almost 20 times greater accuracy. Greater accuracy means fewer penalties. Beginning in 2005, the IRS will automatically determine which employers have achieved the four quarters of EFTPS compliance and reverse the most recent full-paid FTD penalty minus any outstanding taxes. No other action by the employer is necessary.

The IRS will look back up to four quarters prior to the four-quarter compliance period for a full paid FTD penalty to abate. Penalties paid earlier than one year prior to the four-quarter compliance period are not eligible for the automatic offer.

EFTPS is a free service provided by two bureaus of the U.S. Department of the Treasury, IRS and the Financial Management Service (FMS). EFTPS gives employers the ability to make federal tax payments electronically online, by phone or with batch provider software for professionals.

Employers can enroll in EFTPS by visiting [EFTPS.gov](http://eftps.gov) or by calling EFTPS Customer Service at 1-800-555-4477 to receive an enrollment form by mail.

EFTPS was introduced in 1996 and since that time more than 4.6 million employers have enrolled in the system to make their federal tax payments electronically. In fiscal year 2003, EFTPS processed more than 68.5 million transactions totaling more than \$1.5 trillion. Employers can make payments through a secure web site or by phone 24 hours a day, seven days a week from home or office; schedule payments up to 120 days in advance (for businesses) and 365 days in advance (for individuals); and review the last 16 months of tax payment history online or by calling Customer Service. In addition, taxpayers receive an immediate acknowledgement number for every EFTPS transaction for easy record keeping and as proof of the transaction.

### Web Links:

- Electronic Federal Tax Payment System -- <http://www.eftps.gov>
- Financial Management Service -- <http://fms.treas.gov>

If you are not already enrolled and need assistance, please contact your ITG Specialist.



## Section 501(c)(4) Entities and FUTA

Although the Consolidated Appropriations Act of 2000 allowed tribes the opportunity to be exempted from Federal Unemployment Tax, that provision did not automatically extend to entities that a tribe structured under Section 501(c)(4) of the Internal Revenue Code. As a result, advice was requested to clarify FUTA requirements for these entities, which can best be summarized through the following Questions and Answers:

**Question:** A Tribal government is a federally recognized tribe with its own EIN. They have a separate entity with a different EIN and an exemption under 501(c)(4). One or more of the tribal council members sit on the board, but the exempt organization makes its own decisions. The tribal government does not control it. Is the entity subject to FUTA?

**Answer:** Yes. The entity must file Form 940 and pay FUTA. The facts suggest this entity is wholly independent from the tribe. Although the tribal council may have some representation on the entity's board, the entity is structured so to be able to operate wholly independent of the tribe.

**Question:** If a Tribal government has only one entity for the tribe and has structured it under Section 501(c)(4), and the tribal council controls the exempt organization, is the entity liable for paying FUTA and filing Form 940?

**Answer:** No. The entity has no liability for FUTA. The facts suggest the entity could be seen as either operated directly by the tribe or wholly owned by the tribe.

**Question:** A Tribal government is a federally recognized tribe with its own EIN. They have a separate entity with a different EIN that is exempt from income tax under Section 501(c)(4). The board's members consist of the entire tribal council, and they control the entity. Is the 501(c)(4) entity subject to FUTA?

**Answer:** No. The entity has no liability for FUTA. Although there are two separate EINs, the facts suggest the entity is either operated directly by the tribe or wholly owned by the tribe, since the entire tribal council constitutes the Board of the entity.

In summary, a 501(c)(4) entity that is 100% controlled by the tribe and has no autonomy, yet does not exercise government authority on its own, will probably qualify for relief from FUTA. Other 501(c)(4) entities will normally be subject to FUTA.

## Consultation Policy Update

We continue to progress in the development of an IRS Tribal Consultation Policy, following the outline provided by the Advisory Committee on Tax Exempt and Government Entities (ACT). The Office of Indian Tribal Governments held a series of 12 regional meetings and met with tribal representatives to listen to their input on the development of an IRS Tribal Consultation Policy. A summary was compiled and posted to the ITG web site, and interested parties were offered an opportunity to comment on the input before April 30, 2004.

A joint IRS Tribal group has now begun the process of developing an initial Consultation Policy draft, with further opportunities to review and comment as we proceed. We expect to have the initial draft posted to our web site by the fall of 2004.

We would like to thank everyone who has participated in the process to date, and we look forward to the continuing evolution of a Consultation Policy that will best meet the needs of all parties.

## Annual Reporting Requirements under TRDA and GITCA

Many tribes have entered into Tip Reporting agreements such as the Tip Rate Determination Agreement (TRDA) and the Gaming Industry Tip Compliance Agreement (GITCA). While these agreements assist both the tribe and the IRS in improving compliance, both also contain an annual reporting mechanism to assist in addressing noncompliance by non-participating employees. Section II(b) of the TRDA, and section 5(f) of the GITCA outline these requirements.

Many tribes have inquired about the process to be used to meet the reporting obligation. In order to assist, we will be contacting each entity with an existing agreement in order to determine the reporting process that will work best for both parties. In the interim, any questions concerning the annual reporting process can be directed to Julie Reese at (303) 231-5250, ext. 236.

## Private Letter Ruling Clarifies Reporting Requirements for Pow-Wow Prizes

IRS Counsel has issued Private Letter Ruling (PLR) 200420028 in response to questions regarding the taxability of pow-wow prizes. While the PLR was issued in response to a specific tribe's question, this information is an indication of the position the IRS would take in similar cases.

The question presented was whether the tribe is required to issue a Form 1099 to a pow-wow contest winner who receives \$600 or more as a cash prize. The tribe requesting the PLR raised three arguments – they are not subject to tax and by extension not subject to information reporting, that they are not a “person” under the meaning of Section 7701, and that a pow-wow is not a trade or business for the tribe thus further exempting them from reporting the prizes.

The PLR indicated that Form 1099 was required, and provided responses to each of the three positions raised by the tribe;

1. Although federally recognized tribes are not subject to income tax, they are subject to employment taxes and information reporting requirements in the same manner as all other governmental entities. Thus, the “not subject to tax” position was not applicable as there is no nexus to information reporting requirements.
2. In *Chickasaw Nation v. United States*, 208 F.3d 871, 879 (10th Cir. 2000), the court concluded that an Indian tribe is a “person” within the meaning of section 7701(a)(1). It explained that “Congress unambiguously intended for the word ‘person,’ as used in section 7701(a)(1), to encompass all legal entities, including Indian tribes and tribal organizations, that are the subject of rights and duties.” In Revenue Ruling 85-194, 1985-2 C.B. 301, the Service ruled that section 6041 applies to an Indian tribe.
3. The regulations state that “all persons engaged in a trade or business” includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit. As a result, the information reporting requirements of section 6041 are not limited to organizations that are engaged in activities for gain or profit.

Thus, the PLR ruled that Forms 1099 are required to be issued for pow-wow prizes of \$600 or more.

To add your name or e-mail address to our mailing list, please contact us via e-mail at [Michelle.L.Risk@irs.gov](mailto:Michelle.L.Risk@irs.gov), or call Michelle L. Risk at (602) 207-8682 or (520)670-4700 ext. 227.



## Charitable Contributions made to Tribal Governments are Deductible to the Donor **Without** Tribes Requesting Section 501(c)(3) Status

Many questions have been received regarding the tax status of federally recognized tribes. One issue raised by certain grantors concerns a perceived need for Section 501(c)(3) status in order to make deductible charitable contributions to the tribe. The Internal Revenue Service has recently revised its publications to assist tribes in educating donors about the tribe's status.

Under Section 7871 of the Internal Revenue Code, Congress determined that federally recognized Indian tribes and their subdivisions would be treated like states for certain specified purposes, because tribal governments, like state governments, serve the public within their jurisdictional boundaries, and accordingly should be permitted to devote their limited resources to that end.

Any tribe that is a federally recognized tribe and is listed in Revenue Procedure 2002-64 is an organization that may be treated as a governmental entity in accordance with Section 7871. As such, the tribe is eligible to receive tax deductible contributions and does not need to create a separate charitable entity under section 501(c)(3) of the Internal Revenue Code. Publication 78, Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986, has been revised and now includes general explanations that should help familiarize foundations with the fact that tribes are eligible recipients of contributions. **In addition, the tribe would also be eligible to receive charitable contributions that are deductible for federal income, estate, and gift tax purposes by the donor.**

Sometimes governmental units are asked to provide proof of their status as part of a grant application. If your tribe is applying for a grant from a private foundation, the foundation may be requesting certain information from your tribe because of restrictions imposed by the Internal Revenue Code on such foundations under Sections 4945 and 4942 of the Code.

Private foundation grants to governmental units for public or charitable purposes are not subject to these restrictions. Grants to governmental units for public purposes are "qualifying distributions" under Section 53.4942(a)-3(a) of the regulations; and, if they are for charitable purposes, will not be taxable expenditures under section 53.4945-6(a) of the regulations. Most grants to governmental units will qualify as being for charitable (as well as public) purposes.

Some private foundations require grant applicants to submit a letter from the Internal Revenue Service determining them to be exempt under section 501(c)(3). Such a letter, or an underlying requirement that a grantee be a public charity, is not legally required when the prospective grantee is a governmental unit and the grant is for qualifying (public or charitable) purposes.

The following references may be useful to a grantor in verifying eligibility under Section 7871:

- ◆ Revenue Procedure 2002-64 lists Indian tribal governments that are treated similarly to states for federal tax purposes, including sections 7871 and 7701(a)(40) of the Code.
- ◆ Publication 78, Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986, lists organizations eligible to receive tax deductible contributions. Parts I and II include a general explanation of the deductibility of contributions made to tribal governments.
- ◆ Revenue Procedure 84-36 lists subdivisions of Indian tribal governments that are treated as political subdivisions of states for the same specified purposes under the Internal Revenue Code that are noted in Revenue Procedure 2002-64.



## Not Using It? Dissolve That Section 501(c)(3) Entity

In the past, some federally recognized tribes obtained Section 501(c)(3) status merely to be eligible to receive charitable contributions. Now that foundations and other grant makers are becoming more familiar with the rules that allow them to make contributions directly to tribal governments, tribes may no longer need to use the Section 501(c)(3) entity that was created.

It is important to remember that a Section 501(c)(3) entity has an annual filing obligation. If your tribe decides to cease utilizing that entity, the tribe should dissolve the Section 501(c)(3) entity. This will eliminate the annual filing requirement and the possibility that the Employer Identification Number (EIN) can be used without the tribe's knowledge. Tribes may follow the procedures listed below to dissolve the Section 501(c)(3) entity.

Dissolution procedures for 501(c)(3) organizations are as follows:

- Notify IRS Exempt Organization Rulings and Agreements of dissolution/termination in writing.
- Submit a copy of the filed Articles of Dissolution as well as a statement signed by two officers as to how the assets were distributed. If Articles of Dissolution are not available, a written statement should be prepared indicating the effective date of dissolution. The statement submitted needs to be signed and dated by two officers of the Section 501(c)(3) entity.

Once the IRS processes this request, the Tribe will receive a confirmation letter; which formally recognizes the dissolution of the 501(c)(3) status.

The address for the dissolution/termination requests:

Internal Revenue Service  
EO Rulings and Agreements  
P.O. Box 2508  
Cincinnati, Ohio 45201

To check the status of your request, contact the Customer Account Services at (877) 829-5500. If you have any questions or problems regarding this issue or any other issues, please feel free to contact your assigned ITG Specialist.

If you do not know who is your assigned ITG Specialist, then you may contact the Southwest group manager, Steve Bowers at 714-347-9430 or 714-347-9431. He will direct you to the ITG Specialist assigned to assist your tribal government.





# Federal Tax Calendar for Third Quarter 2004

## July 2004

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2 * Payroll date 6/26-6/29	3
4	5	6	7	8 * Payroll date 6/30-7/2	9 * Payroll date 7/3-7/6	10
11	12 Employees report tips from June	13	14 * Payroll date 7/7-7/9	15 ** Monthly Deposit for June	16 * Payroll date 7/10-7/13	17
18	19	20	21 * Payroll date 7/14-7/16	22	23 * Payroll date 7/17-7/20	24
25	26	27	28 * Payroll date 7/21-7/23	29	30 * Payroll date 7/24-7/27	31

## August 2004

SUN	MON	TUE	WED	THU	FRI	SAT
1	2	3	4 * Payroll date 7/28-7/30	5	6 * Payroll date 7/31-8/3	7
8	9	10 Employees report tips from July	11 * Payroll date 8/4-8/6	12	13 * Payroll date 8/7-8/10	14
15	16 ** Monthly Deposit for July	17	18 * Payroll date 8/11-8/13	19	20 * Payroll date 8/14-8/17	21
22	23	24	25 * Payroll date 8/18-8/20	26	27 * Payroll date 8/21-8/24	28
29	30	31				

\*= Make a Payroll Deposit if you are under the semi-weekly deposit rule. \*\* = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

# September 2004

SUN	MON	TUE	WED	THU	FRI	SAT
			1 * Payroll date 8/25-8/27	2	3 * Payroll date 8/28-8/31	4
5	6	7	8	9 * Payroll date 9/1-9/3	10 * Payroll date 9/4-9/7 Employees report tips from August	11
12	13	14	15 * Payroll date 9/8-9/10 ** Monthly Deposit for August	16	17 * Payroll date 9/11-9/14	18
19	20	21	22 * Payroll date 9/15-9/17	23	24 * Payroll date 9/18-9/21	25
26	27	28	29 * Payroll date 9/22-9/24	30		

\*= Make a Payroll Deposit if you are under the semi-weekly deposit rule. NOTE: Deposits made through EFTPS are due one day prior to the dates listed  
 \*\*= Make a Monthly Deposit if you qualify under that rule.

## Return Filing Dates

### July 1

File Form 11-C to register and pay the annual Occupational tax if you are in the business of taking wagers

### August 2

File Form 941 for the quarter ended June 30, 2004. If the tax was deposited in full and on time, file by August 10th.  
 File Form 730 and pay the tax on applicable wagers accepted during June

### August 31

File Form 730 and pay the tax on applicable wagers accepted during July

### September 30th

File Form 730 and pay the tax on applicable wagers accepted during August